IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8823 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MANISH @ BHURIYO PRAVINCHANDRATHAKKAR

Versus

COMMISSIONER OF POLICE

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Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/03/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on 18th August, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), directing detention of the petitioner

under the provisions of the PASA Act. The petitioner has approached this Court with this petition under Article 226 of the Constitution challenging that order.

2. The grounds of detention indicate that the detaining authority took into consideration 4 registered offences against the petitioner with Kagdapith Police Station for theft of automobiles. The detaining authority also took into consideration statements of two witnesses in respect of incidents that occurred on 19th July, 1999 and 28th July, 1999. The detaining authority exercised powers under Section 9(2) of the PASA Act and has not disclosed the identity of those witnesses. The detaining authority recorded that the activities of the petitioner are detrimental to public order and that he is required to be immediately prevented from pursuing his activities. The detaining authority also considered the possibility of resorting to less drastic remedies, but came to conclusion that resorting to such less drastic remedies under ordinary laws may not prove to be efficacious and, therefore, detention under PASA is the only remedy that can be resorted for immediately preventing the petitioner from pursuing his illegal and anti-social activities.

3. The petitioner has challenged this order of detention on various counts. However, learned advocate, Mr. Patel, has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate his submission, Mr. Patel submitted that the statements were verified by the detaining authority on 18th August, 1999 and on that very day, the order in question has been passed. He submitted, therefore, that there was no time for the detaining authority to give consideration to the question of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. Mr. Patel submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659, this petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the authority has acted diligently and quickly and the quickness on the part of the authority may not be considered as non-application of mind. He, therefore, urged that the petition may be dismissed.

5. Having regard to the rival side contentions, it is evident that the statements of anonymous witnesses were recorded on 16th and 17th August, 1999. These two statements were verified by the detaining authority on 18th August, 1999 and the order in question came to be passed on that very day, i.e. on 18th August, 1999. This Court is at loss to appreciate how the detaining authority could have recorded a satisfaction about correctness of the allegations made in the statements about the incidents and how the detaining authority recorded the satisfaction about genuineness of the fear expressed by the witnesses, as there appears nothing except the statements of these two witnesses recorded on 18th August, 1999. There appears not, any other contemporaneous material which could have provided ground for arriving at satisfaction for the detaining authority for the need for exercise powers under Section 9(2) of the PASA Act. No affidavit in reply is filed by the detaining authority.

6. In light of the decision in the case of Kalidas Chandubhai Kahar (supra), the power exercised by the detaining authority under Section 9(2) of the PASA Act would stand vitiated. In that case, the order was passed on the next day of the verification of the statements and still the Division Bench held that it was a wrong exercise of powers under Section 9(2), resulting into the detenu's right of making an effective representation under Article 22(5) of the Constitution.

7. In the instant case, the detaining authority has exercised powers under Section 9(2) of the PASA Act on the very day. In fact, the statements of anonymous witness No.2 was recorded on 17th August, 1999. Thereafter, the proposal must have been made by the sponsoring authority and, thereafter, the verification must have taken place. This would hardly leave any time for the detaining authority to arrive at a genuine subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. Once exercise of that power under Section 992) is found to be vitiated, it would have a direct bearing on the right of the detenu of making an effective representation. The detention, therefore, cannot be permitted to be continued. The order stands vitiated. The petition deserves to be allowed on this ground alone.

8. In view of the above discussion, the petition is allowed. The impugned order of detention dated 18th August, 1999, passed against the detenu-Manish alias

Bhuriyo Pravinchandra Thakkar is hereby quashed. The detenu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J ]

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